










NAVTEJ SINGH JOHAR V. UNION OF INDIA (2018)

Constitutional Interpretation & Basic Structure

PRELIMS SNAPSHOT

-  1. Prelims Snapshot (Fact Box)
-  Year: 2018
-  Case: Navtej Singh Johar v. Union of India
-  Bench Strength: 5 Judges (Constitution Bench)
-  Key Articles Involved: Article 14, Article 15, Article 19(1)(a), Article 21
-  Doctrine Evolved: Decriminalisation of consensual homosexuality; Constitutional morality over societal morality
-  Famous Line: "History owes an apology to the LGBTQ+ community."

CONTEXT & BACKGROUND

The case challenged Section 377 of the Indian Penal Code, which criminalised "carnal intercourse against the order of nature," effectively criminalising consensual homosexual acts. Although the Delhi High Court decriminalised it in 2009, the Supreme Court reversed that in



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Suresh Kumar Koushal v. Naz Foundation (2013).

A group of LGBTQ+ activists, including classical dancer Navtej Johar, filed a fresh writ petition, invoking constitutional rights to dignity, equality, privacy, and freedom.

CONSTITUTIONAL ISSUES RAISED

- Does the NJAC Act violate the Basic Structure of the Constitution, especially judicial independence?
- Can the executive have a significant role in appointing judges to High Courts and the Supreme Court?
- Is the Collegium system flawed yet constitutionally entrenched?

VERDICT & RATIO DECIDENDI

The Court unanimously held that:

- The Section 377 is unconstitutional to the extent it criminalises consensual sex between adults of the same gender
- Sexual orientation is an intrinsic part of identity, and its expression is protected under Articles 14, 15, 19, and 21
- Privacy, dignity, and autonomy are central to the idea of constitutional democracy



- Popular societal morality cannot dictate constitutional rights
- Justice D.Y. Chandrachud famously described the earlier Suresh Kumar Koushal verdict as a "retrograde step" and upheld constitutional morality as the guiding principle for rights-based interpretation.

DOCTRINE / PRINCIPLE EVOLVED

- Right to sexuality, identity, and orientation is protected under the Constitution
- Constitutional morality > societal prejudice
- Emphasis on transformative constitutionalism—the Constitution must evolve to protect the marginalised



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IMPACT & LEGACY

- Decriminalised homosexuality, marking a watershed moment for LGBTQ+ rights in India
- Set the foundation for further debates on civil rights, marriage equality, and anti-discrimination laws
- Reinforced the right to privacy laid down in Puttaswamy v. Union of India (2017)
- Became a global benchmark for human rights jurisprudence in post-colonial democracies



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RELEVANCE FOR UPSC

- GS Paper 2:
 - Fundamental Rights, constitutional morality, human rights law
 - Transformative role of judiciary
- GS Paper 4 (Ethics):
 - Dignity, justice, empathy, respect for diversity
- Essay Paper:
 - Apt for essays on Inclusion in Democracy, Evolution of Rights, Justice for the Marginalised
- UPSC Interview:
- Relevant for discussions on LGBTQ+ rights, role of judiciary in social reform, or constitutional transformation

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